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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,650	02/19/2004	Robert N. Ross		4120

7590  
Robert N. Ross  
563 Whitney Street  
Gardner, MA 01440

EXAMINER
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QUINN, COLLEEN M

ART UNIT	PAPER NUMBER
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3634

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/782,650	ROSS, ROBERT N.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Colleen M. Quinn	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8,10,12-15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,7,9,11,16,18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8,10,12-15,17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

Applicant's election without traverse of Species B in the reply filed on March 11<sup>th</sup>, 2007 is acknowledged. Claims 4, 6, 7, 9, 11, 18 and 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 3, 5, 8, 10, 12-15, 17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 12 the terms "substantially thin" (line 4) and "stable base" (line 6) render the claim indefinite, as it is not clear how thin "substantially thin" is and what makes a "stable base" any different than a just a *base*.

Also regarding claims 1 and 12, the phrase "and any likewise shaped item" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "and any likewise shaped item"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Lastly, regarding claims 1 and 12, the word "means" is preceded by the word(s) "receptacle" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element,

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as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Note that in “handle means” (line 12), the word “handle” implies the implies the function *handling*.

Regarding claim 10 it is unclear what the applicant is referring to when references “multiple devices”, since there is insufficient antecedent basis for this limitation in the claim. If the applicant is referring to the “holder” this needs to be clearly claimed. It is also unclear as to what the applicant is referring to when claiming the devices are formed from “multiple sheets of material stacked together and formed in a sequential forming process.” It is unclear if the applicant is trying to claim that multiple “devices” are made from the same material, and then stacked atop each other, or if the “device” is made from a material that comprises layers of sheets or sheet-like material (i.e.: cardboard or paper mach’e). Appropriate clarification is required.

Regarding claim 19, it is unclear what “environmental resistance” is and how a holder can have “environmental resistance” to an oven. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Guerrero (US 4,004,501) in light of the above rejections. Guerrero discloses a holder (figure 1) for supporting pita pockets, tacos, and any likewise shaped items (4) in an upright position comprising an outer surface (outer surface of 1) wherein a portion of said outer surface and related inner surface is a segment of a substantially thin walled cylinder (bottom of troughs 2) having a curvilinear geometry about an axis, and a stable base (bottom edge of 1), established by contact points that lie on a common base plane wherein said contact points are positioned on opposing edge portions of said outer surface, and item receptacle means (2) positioned within said outer surface sized slightly wider than said item to provide side support and also provides bottom support of said item orientating the length of said item generally transverse to said axis, and handle means (unnumbered handle best seen in figure 1) to carry said holder with said item installed, and also an interior volume (unnumbered space underneath the receptacle means as best seen in Figure 3) accessible from an underside open expanse between said opposing edge portions, allowing multiple said holders to be stacked one upon the other wherein said receptacle means comprises a single or plurality of receptacles positioned in said outer surface for supporting multiples of said

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item (figure 3), wherein said handle means comprises a minimum of one extension from the topside of the outer surface (figure 3) and the holders are formed from a layered sheet material (column 2, lines 35-39) and capable of being stacked atop one another.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero as applied to claims 1, 2 5 and 10 above, and further in view of Baze (US 5,628,245). Guerrero fails to disclose the receptacle means comprising a single or plurality of apertures penetrating the outer surface.

Baze teaches a taco holder (figure 1) comprising receptacle means (1,2) with an outer surface (3) wherein the receptacle means comprise a plurality of apertures (4), providing a taco holder that allows for uniformly supporting and heating of the tacos (column 2, lines 11-13).

Therefore, it would have been obvious to one skilled in the art, to provide the receptacle means of Guerrero with the apertures taught by Baze in order to provide a taco holder that uniformly supports and heats tacos.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero as applied to claims 1, 2 5 and 10 above, and further in view of Gilfert et al. (US 6,302,671). Guerrero fails to disclose stiffening means formed into the holder.

Gilfert et al. disclose an item holder (figure 1) having an outer surface comprising receptacle means (26) wherein the holder comprises stiffening means (34) formed into the holder to eliminate sagging or caving (column 4, lines 53-56).

Therefore, it would have been obvious to one skilled in the art to provide the holder of Guerrero with the stiffening means taught by Gilfert et al. in order to prevent sagging or caving of the holder when an item is placed in the receptacle.

Claims 12-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero in view of Gilfert et al. in light of the rejections above.

Guerrero discloses a holder (figure 1) for supporting pita pockets, tacos, and any likewise shaped items (4) in an upright position comprising an outer surface (outer surface of 1) wherein a portion of said outer surface and related inner surface is a segment of a substantially thin walled cylinder (bottom of troughs 2) having a curvilinear geometry about an axis, and a stable base (bottom edge of 1), established by contact points that lie on a common base plane wherein said contact points are positioned on opposing edge portions of said outer surface, and item receptacle means (2) positioned within said outer surface sized slightly wider than said item to provide side support and also provides bottom support of said item orientating the length of said item generally transverse to said axis, and handle means (unnumbered handle best seen in figure 1) to

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carry said holder with said item installed, and also an interior volume (unnumbered space underneath the receptacle means as best seen in Figure 3) accessible from an underside open expanse between said opposing edge portions, allowing multiple said holders to be stacked one upon the other wherein said receptacle means comprises a single or plurality of receptacles positioned in said outer surface for supporting multiples of said item (figure 3), wherein said handle means comprises a minimum of one extension from the topside of the outer surface (figure 3) and the holders are formed from a layered sheet material capable of being placed in an oven (column 2, lines 35-39) and capable of being stacked atop one another. Guerrero fails to disclose stiffening means formed into the holder.

Gilfert et al. disclose an item holder (figure 1) having an outer surface comprising receptacle means (26) wherein the holder comprises stiffening means in the form of tapering sidewall edge features (32) intended to support the receptacle means (column 4, lines 43-45).

Therefore, it would have been obvious to one skilled in the art to provide the holder of Guerrero with the tapered side wall stiffening means taught by Gilfert et al. in order to prevent sagging or caving of the holder when an item is placed in the receptacle.



**Conclusion**


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fleisher (US Des.370,596) and Knitter (US 4,936,453) both disclose key features of the applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ  
4/6/07

  
SARAH PUROL  
PRIMARY EXAMINER